IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

UNITED STATES OF AMERICA

v. Case No. 8:03-cr-00077-JSM-TBM-ALL

SAMI AMIN AL-ARIAN, ET. AL

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EMERGENCY MOTION OF MEDIA GENERAL OPERATIONS, INC., TAMPA BAY TELEVISION, INC., NEW WORLD COMMUNICATIONS OF TAMPA, INC., WEEKLY PLANET, INC., AND TIMES PUBLISHING CO. FOR LEAVE TO INTERVENE AND FOR RELIEF FROM PRIOR RESTRAINT

Media General Operations, Inc. d/b/a *The Tampa Tribune* ("the Tribune") and WFLA-TV News Channel 8 ("WFLA"); Tampa Bay Television, Inc., d/b/a WFTS ABC Action News ("WFTS"); New World Communications of Tampa, Inc., d/b/a WTVT Fox 13 ("WTVT"); Weekly Planet, Inc., publisher of the *Weekly Planet* newspaper (the "Planet"); and Times Publishing Co., d/b/a the *St. Petersburg Times* (the "Times") seek relief from this Court's one-page Order banning "photographs, sketched drawings, verbal descriptions, or other identifying information about any of the jurors." See Dkt. No. 1044 (May 11, 2005). This Order imposes a prior restraint in violation of the First Amendment. Accordingly, and for the reasons discussed more fully below, the Order must be vacated. Moreover, because jury selection begins May 16, 2005, and because "every moment's continuance of the [order] amounts to a ... continuing violation of the First Amendment,"[1] this motion should be considered on an emergency basis.

[1] New York Times Co. v. U.S., 403 U.S. 713, 715 (1971) (Black, J., concurring).

MEMORANDUM OF LAW

Summary of Argument

The May 11 Order unconstitutionally attempts to censor speech concerning a pending criminal trial. The Order appears to have been entered on the Court's own motion and does not cite any evidence of any effort or intent to exert outside influence on the jurors in this case. Nor does the Order cite any evidence that any anticipated coverage of the trial will impair the Defendants' Sixth Amendment rights or result in juror harassment or intimidation. The Order does not reveal any consideration of less speech-restrictive alternatives. Nor does the Order address whether the prior restraint will effectively achieve its stated ends of preventing outside influence of the jury by persons who would approach them to talk about the case. The news media were not even given prior notice and an opportunity to be heard before the Order was entered. For all of these reasons, the Order must be vacated.

Background

The factual context for this motion is already well-known to this Court. In February 2003, former University of South Florida professor Sami Amin Al-Arian, former University of South Florida instructor Sameeh Hammoudeh, Illinois resident Ghassan Zayed Ballut, and Hernando County resident Hatim Naji Fariz were charged in a fifty-count indictment with offenses that include racketeering and conspiracy to commit murder. The indictment accuses these Defendants and others of supporting, promoting and raising funds for the Palestinian Islamic Jihad, which the United States government previously has declared a terrorist group. The charges against the Defendants, which detail an alleged worldwide conspiracy dating back as early as 1988, are matters of intense local and national public interest. The Tampa Tribune, a daily newspaper, has reported on these proceedings, has filed motions in the case regarding

access to information, and intends to cover the upcoming trial. See Dkt. Nos. 910 (motion seeking guidelines for media access) & 970 (motion for access to juror questionnaires). WFTS, WFLA, and WTVT are television stations that operate from studios in Tampa. The Planet is a weekly newspaper published in Tampa. The Times is a daily newspaper published in St. Petersburg. The television stations, the Planet, and the Times have reported extensively on these proceedings and plan to cover the trial.

In November 2004, the Court granted the Government's request for an innominate jury. See Dkt. No. 738. On May 11, 2005, this Court entered an Order stating in its entirety:

> This cause came on for consideration regarding the innominate jury to be selected in this cause beginning May 16, 2005. To protect the jurors from outside influence, including persons who would approach them to talk about the case, it is hereby
>
> ORDERED AND ADJUDGED that:
>
> 1. There shall be no photographs, sketched drawings, verbal descriptions or other identifying information about any of the jurors in this case.
>
> 2. Violations of this Order shall be subject to contempt sanctions by this Court.
>
> DONE and ORDERED in Tampa, Florida on May 11, 2005.

See Dkt. No. 1044. This Order indicates that it was to be disseminated to counsel for the parties of record and the United States Marshal. The Order also was mentioned during a May 11 meeting of numerous media representatives with court staff. After that meeting, a Tribune reporter obtained a copy of the Order from the clerk's office. The Tribune reporter then contacted the Court's judicial assistant seeking clarification of the Order and received in response the following message:

> Judge Moody's response to your questions: You may make general comments like "there are eight men and four women on the jury." You cannot describe the jurors. You cannot say where the jurors work or give other specifics. You cannot say anything that would cause a co-worker to recognize or figure out who a juror might be.

Thus, although the Order was brief and does not identify any person to whom it is directed, it appears that the Order was aimed at the news media and was intended to censor news reports regarding this case.

Prior restraints are presumptively unconstitutional.

The right of the media to publish free from government interference is so important that any prior restraint bears a heavy presumption of unconstitutionality. See Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 558 (1976) (citing Near v. Minnesota, 283 U.S. 697 (1931) and Carroll v. Princess Anne, 393 U.S. 175 (1968)). The United States Supreme Court has emphatically stated that prior restraints "on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press, 427 U.S. at 559 (emphasis added) (citing national security interest cases). A prior restraint is "one of the most extraordinary remedies known to our jurisprudence." Id. at 562. Not surprisingly, therefore, the United States Supreme Court has never upheld a prior restraint. In fact, a number of Supreme Court opinions have expressed the ban on judicial injunctions against publication in absolute terms. See, e.g., Patterson v. Colorado ex rel. Attorney General, 205 U.S. 454, 462 (1907) ("the main purpose of [the First and Fourteenth Amendments] is to prevent all such previous restraints upon publications") (emphasis in original) (internal punctuation omitted); Grosjean v. American Press Co., 297 U.S. 233, 249 (1936) ("the First Amendment ... was meant to preclude the national government ... from adopting any form of previous restraint upon printed publications"). In dicta, the Supreme Court has noted the possibility of a national security exception to the rule against prior restraints. See Near v. Minnesota, 283 U.S. 697, 716 (1931) (acknowledging possibility that "a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops"). But the

Supreme Court has yet to find facts sufficiently compelling to justify such an injunction. In fact, the Court had the opportunity to apply a national security exception in New York Times Co. v. United States, 403 U.S. 713 (1971), and in that case decisively rejected a prior restraint against publication of The Pentagon Papers.

The Supreme Court also has consistently rejected prior restraints in the context of trial proceedings. For example, in Oklahoma Publishing Co. v. District Court, 430 U.S. 309 (1977), the Court rejected an order prohibiting the media from publishing the name and photograph of an 11-year-old boy charged with second-degree murder. Id. at 309-10. Similarly, in Nebraska Press, 427 U.S. at 539, the Court stuck down an order prohibiting pre-trial coverage of certain facts "strongly implicative" of a murder defendant. Id. at 541, 569-70. The Constitution's free-speech and free-press guarantees, the Court noted, "afford special protection against orders that prohibit the publication or broadcast of particular information." Id. at 556. The protection against prior restraint, the Court added, "should have particular force as applied to reporting of criminal proceedings." Id. at 559.

Other courts have reached similar results. For example, in KPNX Broadcasting Co. v. Superior Court, 678 P.2d 431 (Ariz. 1984), the Arizona Supreme Court rejected an order providing for judicial review of any courtroom sketches of a jury prior to broadcast on television, despite "concern at the possibility of retribution and fear for personal and family safety expressed by some of the venire members." Id. at 434. The KPNX court noted that censorship of courtroom sketches was unlikely to be effective, because (among other things) anyone desiring familiarity with jurors' faces had "ample opportunity to observe them by the simple device of attending the trial." Id. at 437. The court further noted: "Self-censorship, induced by the threat of contempt citations, is considered the worst harm of a prior restraint." Id. at 439.

See also Times Publishing Co. v. State, 632 So. 2d 1072, 1075-76 (Fla. 4th DCA 1994) (striking down prior restraint prohibiting media identification of jurors in murder trial).[2]

More recently, in United States v. Quattrone, 402 F.3d 304 (2d. Cir. 2005), the Second Circuit likewise rejected a prior restraint that directed the news media not to publish jurors' names. Id. at 312. And in United States v. Gurney, 558 F.2d 1202 (5th Cir. 1977), an appeal from this district, the former Fifth Circuit noted that, although trial courts are not required to give the news media juror names in writing, the media are "free to report whatever occurs in open court" and "cannot be denied access to any information already within the public domain," including juror names that were announced orally in that case. Id. at 1205, 1208, & 1210 n.12. Consequently, the former Fifth Circuit clearly recognized that a trial court must not restrain the publication of juror information that is available publicly or in open court.

The Fifth Circuit reinforced Gurney's protection of publicly available juror information in United States v. Brown, 250 F.3d 907 (5th Cir. 2001), a case involving an anonymous jury. Brown presented the very question this Court's May 11 Order addresses – i.e., whether a court seeking to conceal juror identities may go so far as to restrain the news media. The Brown district court had prohibited "attempts by the media or others to interfere" with the court's

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[2] See also State v. Neulander, 801 A.2d 255, 258, 271 (N.J. 2002) (striking down order barring media identification of jurors without authorization from court), cert. denied, 537 U.S. 1192 (2003); State ex rel. National Broadcasting Co. v. Court of Common Pleas, 556 N.E.2d 1120, 1128-29 (Ohio 1990) (order prohibiting publication of juror names found to be illegal prior restraint; court held no hearing, considered no alternatives, and made no findings); Commonwealth v. Genovese, 487 A.2d 364, 368 (Pa. Super. Ct. 1985) (order preventing publication or other dissemination of names of jurors held to be invalid prior restraint; "there is no evidentiary basis on which to conclude that an order of prior restraint was necessary"); State ex rel. New Mexico Press Ass'n v. Kaufman, 648 P.2d 300, 306 (N.M. 1982) (striking down order prohibiting publication of juror names); Des Moines Register & Tribune Co. v. Osmundson, 248 N.W.2d 493, 500-501 (Iowa 1976) (court order prohibiting disclosure of names, addresses, telephone numbers and pictures of jurors held to be invalid prior restraint).

anonymous jury order and had directed the media "not to attempt to circumvent this Court's ruling preserving the jury's anonymity." Id. at 911. These rulings, the Fifth Circuit held, "interdicted the press from independent investigation and reporting about the jury based on facts obtained from sources other than confidential court records, court personnel or trial participants." Id. at 918. The trial court's attempts to force the news media to respect juror anonymity, the Fifth Circuit found, were unconstitutional. Id. at 917-18.

The courts' repeated rejection of prior restraints of trial coverage is consistent with the First Amendment's protection of the right of access to criminal trials. Nearly six decades ago, the Supreme Court recognized that:

> A trial is a public event. What transpires in the court room is public property.... Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.

Craig v. Harney, 331 U.S. 367, 374 (1947). Applying this principle, the Craig Court unequivocally rejected a contempt citation against journalists for their coverage of a trial. Id. at 376-78. And since Craig the Court has recognized that "a presumption of openness inheres in the very nature of a criminal trial under our system of justice," and accordingly the First Amendment protects the "right to attend criminal trials to hear, see, and communicate observations concerning them." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 573, 576 (1980) (plurality opinion). Restricting speech about a criminal trial is, of course, contrary to Richmond Newspapers' presumption and an abridgement of the First Amendment right that decision recognized.

The May 11 Order imposes a prior restraint.

Read in the context of this case law, this Court's May 11 Order unquestionably imposes a presumptively unconstitutional prior restraint. The term "prior restraint" refers to "a law, regulation or judicial order that suppresses speech – or provides for its suppression at the discretion of government officials – on the basis of the speech's content and in advance of its actual expression." Quattrone, 402 F.3d at 309. That is precisely what the May 11 Order imposed. The Court has forbidden in perpetuity the publication of truthful information that will become available to the public through open court proceedings or through observation inside and outside the courtroom. Specifically, the Order prohibits "photographs, sketched drawings, verbal descriptions or other identifying information." See Dkt. No. 1044. Such expressive activity, the Court already has determined, "shall be subject to contempt sanctions." Id. (emphasis added). Thus, for example, if a reporter recognizes a juror as someone whose photograph was previously published, this Court already has decreed that republication of that photo would constitute contempt. The Order would likewise censor and treat as contempt a drawing that an artist might prepare from memory after leaving the courtroom. The Order also would prohibit a television station from conveying verbal descriptions of jurors, such as "a middle-aged attorney" or "a Pinellas County businessman," even if the television station learns such information from non-judicial sources. Indeed, the breadth of the Order was confirmed by the Court's communication to the Tribune's reporter that she "may make general comments like 'there are eight men and four women on the jury' " but "cannot describe the jurors," "cannot say where the jurors work or give other specifics," and "cannot say anything that would cause a co-worker to recognize or figure out who a juror might be." Clearly, therefore, the Order is intended not only to "chill"

speech but to "freeze" it, just like the coverage restrictions in Nebraska Press, 427 U.S. at 559. The Order, therefore, imposes a presumptively unconstitutional prior restraint.

The May 11 prior restraint is unlawful.

Although the Supreme Court in dicta has allowed that a prior restraint might be constitutional in certain circumstances, the particular facts of this case and the May 11 Order do not come close to meeting those standards. In particular, there is no reason to believe that the prior restraint will be effective in protecting the jurors from outside influence, or that alternatives will not adequately serve that goal. The May 11 Order, therefore, cannot satisfy the strict standards under which the Supreme Court has hinted that a prior restraint might be valid.

For example, in considering the possibility of a prior restraint, the Supreme Court has asked "how effectively a restraining order would operate to prevent the threatened danger." Nebraska Press, 427 U.S. at 562. In this case, as in KPNX, 678 P.2d at 434, censorship of trial coverage is unlikely to be effective, because anyone desiring familiarity with jurors' faces will have "ample opportunity to observe them by the simple device of attending the trial." Id. at 437. The Second Circuit just two months ago reversed a prior restraint for precisely that reason. See Quattrone, 402 F.3d at 304. Although "imposition of a prior restraint on the publication of jurors' identities seems likely to reduce the risk of juror harassment or other disruption of the trial," that measure is in fact unlikely to be effective, the Second Circuit found, because "any member of the public present in the courtroom" is able to learned the jurors' identities and to disseminate that information. See 402 F.3d at 312. To be sure, this Court, unlike the Quattrone district court, has elected to seat an innominate jury, so jurors' names are not likely to be spoken in open court during the trial. The jurors, however, will still be visible to anyone present in the courtroom. Therefore, the numerous spectators watching this trial will be able to note the

appearance of the jurors, to recognize jurors with whom the spectators are familiar, and (as a practical matter) to leave the courtroom at the end of the day and describe the jurors to others.[3] The court's Order restraining the news media, therefore, will not effectively advance this Court's stated goal.

Similar facts led the Fifth Circuit to overturn the prior restraint in United States v. Brown, 250 F.3d at 907. In that case, the Fifth Circuit concluded that the efficacy requirement under Nebraska Press was the "Achilles heel" of a prior restraint intended to preserve juror anonymity, in part because "restraining the press from independent investigation and reporting about the jurors would not necessarily deter defendants who have already manifested a willingness to tamper with court processes." Id. at 917-18. In other words, the prior restraint would trample the First Amendment but would not solve the problem of jury tampering. Id. at 911, 917-18. See also Quattrone, 402 F.3d at 312 ("Regardless of restrictions on the press, therefore, any member of the public present in the courtroom could have learned the jurors' names and disseminated that information as widely as possible") (citing Genovese, 487 A.2d at 369 ("Anyone bent upon intimidating jurors in this case could readily have ascertained their identity

[3] Although the Order on its face does not apply solely to the news media, as a practical matter, the news media will be most effected by it and the most likely target for any enforcement efforts, because person-to-person conversations identifying jurors will be almost impossible to detect and to regulate. The real effect of the Order, therefore, is to regulate speech by the news media and not individuals. That fact further undermines the Order's constitutionality. See The Florida Star v. B.J.F., 491 U.S. 524, 540 (1989) (striking down Florida Statute that banned reporting of rape victims' names in "an instrument of mass communication," because (among other things) individual who maliciously spreads word of victim's identity is not covered, "despite the fact that the communication of such information to persons who live near, or work with, the victim may have consequences as devastating as the exposure of her name to large numbers of strangers"; "When a State attempts the extraordinary measure of punishing truthful publication in the name of privacy, it must demonstrate its commitment to advancing this interest by applying its prohibition evenhandedly, to the smalltime disseminator as well as the media giant.").

by the simple expedient of being present in the courtroom"; accordingly, prior restraint on news media "was certainly not effective to protect them from intimidation")); Des Moines Register, 248 N.W.2d at 501 ("If the threat was of harassment during trial, those who wished to learn who was on the jury had only to attend the trial.... Anyone determined to exert improper influences on jurors could do so despite the restraint on publication of their names. On this basis, the restraint on publicity could not effectively obviate the asserted danger."). The simple fact is that, in a public trial, jurors are recognizable to the public, regardless of whether the media report juror-identifying information. This Court's prior restraint, therefore, will not be effective and, consequently, is invalid under Nebraska Press.

In addition to efficacy, the Court in weighing a prior restraint also must consider whether publication will "surely result in direct, immediate, and irreparable damage to our Nation or its people." See New York Times, 403 U.S. at 730 (White & Stewart, JJ., concurring). Or, in the context of this case, this Court must consider whether publication of "photographs, sketched drawings, verbal descriptions or other identifying information" will "surely result in direct, immediate, and irreparable damage" to jurors or this trial. Id. The May 11 Order mentions no evidence of such certainty of harm. The Order does not cite any evidence of plans by any outsiders to influence the jury. Nor does the Order reveal any consideration of less-restrictive alternatives that might prevent such influence. For example, the Order does not mention searching voir dire, the use of emphatic and clear instructions, or sequestration, all alternatives cited in Nebraska Press, 427 U.S. at 564. The May 11 Order also does not mention the possible effectiveness of emphatic warnings to the parties and the public that jurors are not to be contacted during the trial. See Quattrone, 402 F.3d at 311. Nor is there any indication that the additional security measures being taken in connection with this trial will be inadequate.

Clearly, the May 11 Order fails to articulate any factual basis why a prior restraint is necessary. Therefore, even assuming the Supreme Court would allow such an order in the appropriate case, the showing has not been made that this is such a case.

The May 11 Order is vague, is overly broad, and was entered improperly.

The prior restraint also must be vacated because the May 11 Order is vague, overly broad, was entered without notice, and is of indefinite duration. Although as discussed above the Supreme Court has never upheld a prior restraint, case law makes clear that, if such an injunction were ever proper, the order imposing a prior restraint must not be vague, must not be overly broad, must be entered only after notice to those whose speech would be enjoined, and must be of the briefest possible duration. The May 11 Order meets none of these requirements.

First, the Order is unquestionably too vague and overly broad. In Nebraska Press, the Supreme Court held that the trial court's attempt to censor news reports "strongly implicative of the accused" was too vague to survive judicial scrutiny. See 427 U.S. at 568. Likewise, in Hirschkop v. Snead, 594 F.2d 356 (4th Cir. 1979) (en banc), the Fourth Circuit applying Nebraska Press struck down a rule of professional responsibility banning lawyer statements about "matters that are reasonably likely to interfere with a fair trial." Id. at 371. "This proscription is so imprecise that it can be a trap for the unwary," the Fourth Circuit explained. Id. The language of the rule did not clearly "draw the line between what is permissible and what is forbidden." Id. The May 11 Order in this case suffers from the same defects. The ban on "verbal descriptions or other identifying information" does not draw any clear lines. When does reporting a mere fact, such as the racial or religious make-up of the panel, become an unlawful "verbal description"? The Order does not answer this question. The e-mail message from the

Court's judicial assistant, to the extent that such a document can be seen as an order,[4] is similarly vague. The message says "general comments" such as the gender of jurors are not prohibited, but then adds that the Tribune's reporter "cannot describe the jurors," "cannot say where the jurors work or give other specifics," and "cannot say anything that would cause a co-worker to recognize or figure out who a juror might be." Such generalities give would-be speakers no more guidance than did Nebraska Press's ban on facts "strongly implicative of the accused." See 427 U.S. at 568. The May 11 Order, therefore, is unconstitutionally vague.[5]

The Nebraska Press Court further held that the prior restraint banning reportage of court proceedings was overly broad, because the attempt to enjoin the reporting of events in open court "plainly violated settled principles." Id. "There is nothing that proscribes the press from reporting events that transpire in the courtroom," the Court explained. See id. (quoting Sheppard v. Maxwell, 384 U.S. 333, 362-63 (1966)) (internal punctuation omitted). Accordingly, the Nebraska Press Court held that, "once a public hearing had been held, what transpired there could not be subject to prior restraint." Id. Similarly, once open proceedings occur in this case, Nebraska Press and the First Amendment require that anyone present be free to report whatever occurs without censorship. The May 11 Order, by purporting to limit what observers might say

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[4] See Ashcraft v. Conoco, Inc., 218 F.3d 288, 294, 298-99 (4th Cir. 2000) (label that paralegal affixed to sealed envelope with knowledge and advice of clerk's office staffer could not support contempt citation against reporter who opened envelope, even though court had previously entered order approving sealing of settlement agreement that was in envelope).

[5] Indeed, the Order could not support even a contempt citation, much less a prior restraint. See Doe v. Bush, 261 F.3d 1037, 1058 (11th Cir. 2001) (contempt finding must be based upon violation of "a clear, definite and unambiguous order"); Ashcraft, 218 F.3d at 295 (criminal contempt may be found only if violated order was "definite, clear, specific, and left no doubt or uncertainty in the minds of those to whom it was addressed"; contempt order against newspaper and reporter vacated).

about jurors through "verbal descriptions or other identifying information," expressly conflicts with Nebraska Press.

The May 11 Order also purports to gag persons who were not given prior notice and an opportunity to be heard, and to do so forever. As the Second Circuit noted just two months ago, "the lack of notice or opportunity to be heard normally renders a prior restraint invalid." See Quattrone, 402 F.3d at 312 (citing Carroll v. President & Com'rs of Princess Anne, 393 U.S. 175, 180 (1968)). Applying this rule, the Second Circuit found that the Quattrone district court "erred by failing to give prior notice and by waiting a full day after imposition of the prior restraint [regarding juror names] before granting a hearing on the merits." Id. Similarly, in Procter & Gamble Co. v. Bankers Trust Co., 78 F.3d 219 (6th Cir. 1996), the Sixth Circuit forcefully condemned a district court's ex parte prior restraint of a news magazine's coverage of a civil case. Although courts may act ex parte in some circumstances, "there is no place for such orders in the First Amendment realm 'where no showing is made that it is impossible to serve or to notify the opposing parties and give them an opportunity to participate.' " See id. at 226 (quoting Carroll v. Princess Anne, 393 U.S. 175, 180 (1968)). Yet in this case, the May 11 Order was entered without prior notice to those who were to be silenced and without any reason for the lack of notice to them. For that reason alone, the Order is invalid.

Finally, the Order's unlimited duration is a further defect of constitutional significance. The May 11 Order has no expiration date and, therefore, unless vacated, will exist indefinitely, long after any need to protect jurors from outside influence has ended. Case law unequivocally condemns such permanent injunctions against speech See, e.g., Vance v. Universal Amusement Co., 445 U.S. 308, 316-17 (1980) (striking down regulatory scheme that made possible "prior restraints of indefinite duration"); Times-Picayune Pub. Corp. v. Schulingkamp, 419 U.S. 1301,

1308 (1974) (staying trial court's prior restraints on trial coverage, and noting that restrictions were "pervasive and of uncertain duration") (Powell, J., as circuit justice). Because the May 11 Order contains no time limits, the Order must be set aside.

CONCLUSION

The May 11 Order imposes a presumptively unconstitutional prior restraint that is broad in scope and of unlimited duration. Nothing in the Order or this case justifies such this extreme measure. The Order should be vacated immediately.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 3.01(d), the Tribune, WFLA, WTVT, WFTS, the Planet, and the Times respectfully request oral argument on this motion and estimate that the argument will take sixty (60) minutes.

Respectfully submitted,

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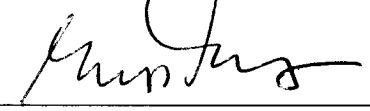
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2005, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to Terry A. Zitek, Kevin T. Beck, Stephen N. Bernstein, M. Allison Guagliardo, Bruce G. Howie, William B. Moffitt, Linda G. Moreno, Wadie E. Said, and Stephen M. Crawford. I further certify that the foregoing document was sent by facsimile to those persons and to David M. Snyder and Alison M. Steele.



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